

IN THE SUPREME OF TENNESSEE

AT NASHVILLE

JOHN DARREN WELKER } *DAVIDSON CHANCERY*
 } *No. Below 96WC-514*
 Plaintiff/Appellee }
 } *Hon. Robert E. Corlew*
 vs. }
 }
 } *No. 01S01-9810-CH-00192*
 BRIDGESTONE/FIRESTONE }
 }
 Defendant/Appellant } *AFFIRMED*

FILED
October 11, 1999
Cecil Crowson, Jr.
Appellate Court Clerk

JUDGMENT ORDER

This case is before the Court upon the entire record, including the order of referral to the Special Workers' Compensation Appeals Panel, and the Panel's Memorandum Opinion setting forth its findings of fact and conclusions of law, which are incorporated herein by reference.

Whereupon, it appears to the Court that the Memorandum Opinion of the Panel should be accepted and approved; and

It is, therefore, ordered that the Panel's findings of fact and conclusions of law are adopted and affirmed, and the decision of the Panel is made the judgment of the Court.

Costs will be paid by defendant/appellant, for which execution may issue if necessary.

IT IS SO ORDERED on October 11, 1999.

PER CURIAM

IN THE SUPREME COURT OF TENNESSEE
SPECIAL WORKERS COMPENSATION APPEALS PANEL AT NASHVILLE
(MAY 27, 1999 SESSION)

JOHN DARREN WELKER,)

Plaintiff/Appellee,)

VS..)

BRIDGESTONE/FIRESTONE,)

Defendant/Appellant,)

DAVIDSON CHANCERY

Hon. Robert E. Corlew, III

Chancellor.

NO. 01S01-9910-CL-00192

FILED

October 11, 1999

**Cecil Crowson, Jr.
Appellate Court Clerk**

For Appellants

Kitty Boyte
Nashville, TN

For Appellee

Susan K. Bradley
Howard W. Wilson
Nashville, TN

MEMORANDUM OPINION

Members of Panel:

Justice Adolpho A. Birch, Jr.
Henry D. Bell, Special Judge
Hamilton Gayden, Jr., Special Judge

AFFIRMED

Gayden, Judge

MEMORANDUM OPINION

This workers compensation appeal has been referred to the Special Workers Compensation Appeals Panel in accordance with Tenn. Code Ann. § 50-6-225(e)(3) for hearing and reporting of findings of fact and conclusions of law. The appellant, Bridgestone/Firestone, alleges that the trial court erred in considering lay testimony when determining the causal relationship between the disability and the employment activity. As discussed below, the panel has concluded that the trial court should be affirmed.

Review of the finding of facts by the trial court shall be de novo upon the record of the trial court, accompanied by a presumption of the correctness of the finding, unless the preponderance of the evidence is otherwise.

John Welker, the appellee, is thirty-one years old, with a high school education, The appellee has worked with Bridgestone/Firestone since June 1990, as a first floor trucker, a belt loader, a Banbury operator and a tire builder. The appellee also worked for his father in housing construction, laying vinyl, painting, plumbing and insulation.

As a belt loader the appellee worked in twelve hour shifts for three days in the first week and four days in the next week. Belt loading involved removing 75 pound bales of rubber from skids every two and half minutes continuously for twelve hours. In one night the appellee would lift between 20,000 pounds to 50,000 pounds.

On January 22, 1995 the appellee hurt his back while pulling a seventy-five pound bail of rubber from a frozen skid. He reported low back pain to the health unit by phone on January 31, 1995. Dr. Lanford first treated Welker on February 15, 1995, and found through MRI films taken on February 2, that the appellee had a bulging disc in the lumbar region and congenital lumbar vertebra, but no disc rupture. The appellee underwent physical therapy and was placed on light duty at work with a thirty pound restriction. Dr. Lanford released the appellee on May 10, 1995 noting that the appellee had experienced no pain for four weeks. The appellee continued to work as a belt loader until January 1996.

On January 31, 1996 the appellee called the health unit and reported that he still had occasional back pain and wished to have a follow up visit with Dr. Lanford. The appellee visited Dr.

Lanford on February 29, 1996. He reported experiencing radicular pain and positive straight-leg raising, but did not mention any specific event that would have caused this pain. After several diagnostic tests Dr. Lanford diagnosed a ruptured disc. Subsequently the appellee left the belt loader job and Dr. Lanford performed a lumbar laminectomy. Bridgestone paid the appellee's medical bills up to the time of the surgery.

Prior to the surgery, the appellant denied liability on the claim after hiring a private investigator who captured, on video tape, the appellee lifting an insulating unit weighing approximately two hundred fifty pounds on December 12, 1995. The appellant did pay the appellee vacation and absentee pay until he returned to work on August 10, 1996. Employees of the appellant can only receive one benefit, either workers compensation or accident and sickness.

The trial court found that the injury arose out of and in the course of the appellee's employment at Bridgestone/Firestone making it a compensable injury. The trial court awarded temporary total disability benefits from April 7, 1996 until August 8, 1996. The trial court also found that the plaintiff retained a fifteen percent permanent partial impairment to the body as a whole based on the fact that Mr. Welker had returned to his pre-injury employment making the same or greater wages.

After careful review of the record this panel does not find that the trial court erred in considering lay testimony in determining causation of the injury in relation to appellee's employment. The lay testimony clearly buttresses the conclusion that the injury sustained was work related. This panel has found many cases in which lay testimony was considered when determining causation. For the reasons stated above the trial court's decision is affirmed with cost on appeal taxed to the appellant.

Hamilton Gayden, Jr., Special Judge

CONCUR:

Justice Adolpho A. Birch, Jr.

Henry D. Bell, Special Judge